

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MICHAEL WESTON,

Petitioner,

v.

Case No. 14-CV-424

PAUL KREMER,

Respondent.

RULE 4 ORDER

Petitioner Michael Weston, who is currently incarcerated at the Racine Correctional Institution, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket # 1.) Previously, I issued an order requiring Weston to provide additional information regarding the exhaustion of his claims as well as the timeliness of his petition. (Docket # 5.) He filed a supplement to his petition, and I will therefore now screen his petition pursuant to Rule 4 of the Rules Governing § 2254 Cases.

Rule 4 provides:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

During the initial review of habeas petitions, the court generally reviews whether the petitioner has set forth cognizable constitutional or federal law claims and exhausted available state remedies.

As noted in my previous order, Weston is challenging the revocation of his parole. He alleged Due Process, Equal Protection, and Eighth Amendment violations. In addition, he appears to allege that he is innocent of the conduct that formed the basis of his revocation. Upon my first review of

the petition, it appeared that both exhaustion and timeliness were likely issues. Accordingly, I ordered Weston to provide additional information. Although Weston's submission was not entirely responsive or helpful, it does not "plainly appear" that Weston is not entitled to relief. That is, it does not "plainly appear" that Weston has failed to exhaust to his claims or that his petition is untimely. Moreover, his Due Process, Equal Protection, and Eighth Amendment claims clearly present federal constitutional issues properly brought in a petition for habeas corpus. Therefore, the Court concludes that summary dismissal under Rule 4, Rules Governing Habeas Corpus Cases, is not appropriate because it does not plainly appear from "the face of the petition" that the petitioner is not entitled to relief. Consequently, the respondent will be called upon to serve and file an answer, motion, or other response to the petition for a writ of habeas corpus.

NOW, THEREFORE, IT IS ORDERED that a copy of Weston's petition and this order shall be served upon the respondent by service upon the State of Wisconsin Attorney General.

IT IS FURTHER ORDERED THAT the respondent is directed to serve and file an answer, motion, or other response to the petition, complying with Rule 5 of the Rules Governing Habeas Corpus Cases, within **SIXTY** (60) days of the date of this order.

IT IS FURTHER ORDERED THAT unless the respondent files a dispositive motion in lieu of an answer, the parties shall abide by the following schedule regarding the filing of briefs on the merits of the petitioner's claims:

1. The petitioner shall have forty-five (45) days following the filing of the respondent's answer within which to file his brief in support of his petition;
2. The respondent shall have forty-five (45) days following the filing of the petitioner's initial brief within which to file a brief in opposition; and

3. The petitioner shall have thirty (30) days following the filing of the respondent's opposition brief within which to file a reply brief, if any.

In the event that respondent files a dispositive motion and supporting brief in lieu of an answer, this briefing schedule will be suspended and the briefing schedule will be as follows:

4. The petitioner shall have forty-five (45) days following the filing of the respondent's dispositive motion and supporting initial brief within which to file a brief in opposition;

5. The respondent shall have thirty (30) days following the filing of the petitioner's opposition brief within which to file a reply brief, if any.

Pursuant to Civil L.R. 7(f), the following page limitations apply: briefs in support of or in opposition to the habeas petition or a dispositive motion filed by the respondent must not exceed thirty pages and reply briefs must not exceed fifteen pages, not counting any statements of facts, exhibits, and affidavits.

Dated at Milwaukee, Wisconsin this 23rd day of June, 2014.

BY THE COURT

s/ Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge